

1-1 By: Ellis, Duncan, Hinojosa S.B. No. 1611
1-2 (In the Senate - Filed March 8, 2013; March 20, 2013, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 March 28, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 1; March 28, 2013,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

1-8	Yea	Nay	Absent	PNV
1-9	X			
1-10		X		
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1611 By: Hinojosa

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to discovery in a criminal case.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. This Act shall be known as the Michael Morton
1-22 Act.
1-23 SECTION 2. Article 39.14, Code of Criminal Procedure, is
1-24 amended by amending Subsection (a) and adding Subsections (c)
1-25 through (j) to read as follows:
1-26 (a) Subject to the restrictions provided by Article 39.15,
1-27 as soon as practicable after receiving a timely request from the
1-28 defendant the state shall ~~[Upon motion of the defendant showing~~
1-29 ~~good cause therefor and upon notice to the other parties, except as~~
1-30 ~~provided by Article 39.15, the court in which an action is pending~~
1-31 ~~shall order the State before or during trial of a criminal action~~
1-32 ~~therein pending or on trial to]~~ produce and permit the inspection
1-33 and the electronic duplication ~~[copying]~~ or photographing, by or on
1-34 behalf of the defendant, of any offense reports or of any designated
1-35 documents, papers, written or recorded statements ~~[statement]~~ of
1-36 the defendant or a witness, including witness statements of law
1-37 enforcement officers but not including ~~[, (except written~~
1-38 ~~statements of witnesses and except]~~ the work product of counsel for
1-39 the state in the case and their investigators and their notes or
1-40 report ~~[,]~~, books, accounts, letters, photographs, or objects or
1-41 tangible things not otherwise privileged ~~[,]~~ which constitute or
1-42 contain evidence material to any matter involved in the action and
1-43 which are in the possession, custody, or control of the state or any
1-44 person under contract with the state ~~[State or any of its agencies]~~.
1-45 The state may provide electronically to or duplicate electronically
1-46 for the defendant any documents, items, and information described
1-47 by this article. The ~~[order shall specify the time, place and~~
1-48 ~~manner of making the inspection and taking the copies and~~
1-49 ~~photographs of any of the aforementioned documents or tangible~~
1-50 ~~evidence, provided, however, that the]~~ rights granted to the
1-51 defendant under this article do ~~[herein granted shall]~~ not extend
1-52 to written communications between the state and an agent,
1-53 representative, or employee of the state. This article does not
1-54 authorize ~~[State or any of its agents or representatives or~~
1-55 ~~employees. Nothing in this Act shall authorize]~~ the removal of the
1-56 documents, items, or information ~~[such evidence]~~ from the
1-57 possession of the state ~~[State]~~, and any inspection shall be in the
1-58 presence of a representative of the state ~~[State]~~.
1-59 (c) If only a portion of the applicable document, item, or
1-60 information is subject to discovery under this article, the state

is not required to produce or permit the inspection of the remaining portion and may withhold or redact that portion. The state shall inform the defendant that a portion of the document, item, or information has been withheld or redacted. On request of the defendant, the court shall conduct a hearing to determine whether withholding or redaction is justified under this article or other law.

(d) On a showing of good cause specific to the case, the court may enter an appropriate protective order that a specified disclosure be denied, restricted, or deferred or that the attorney representing the defendant is prohibited from distributing to a third party offense reports or witness statements received from the state. For purposes of this subsection, "good cause" includes the probable loss, destruction, or fabrication of evidence, the probable compromise of an investigation by law enforcement, or evidence of intimidation, a threat of harm, or danger to the safety of the victim or witness. In the case of a pro se defendant, if the court orders the state to produce and permit the inspection of the document, item, or information under this subsection, the state shall permit the pro se defendant to inspect and review the document, item, or information but, notwithstanding Subsection (a), is not required to allow electronic duplication of the document, item, or information.

(e) Notwithstanding any other provision of this article, the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.

(f) The state shall document or otherwise electronically record the documents, items, and information provided to the defendant under this article.

(g) Before accepting a plea of guilty or nolo contendere, or before trial, each party shall acknowledge in writing or on the record in open court the disclosure, receipt, and list of the documents, items, and information provided to the defendant under this article.

(h) If at any time before, during, or after trial the state discovers any additional documents, items, or information required to be disclosed under Subsection (e), the state shall promptly disclose the existence of the documents, items, or information to the defendant or the court.

(i) A court may order the defendant to pay costs related to discovery under this article, provided that costs may not exceed those provided for by Chapter 552, Government Code.

(j) To the extent of any conflict, this article prevails over Chapter 552, Government Code.

SECTION 3. The change in law made by this Act applies to the prosecution of an offense committed on or after the effective date of this Act. The prosecution of an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 4. This Act takes effect January 1, 2014.

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